

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal }
of }
HERMAN E. HETZEL }

Appearances:

For Appellant: B, H . Neblett, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
John S. Warren, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Herman E. Hetzel to a proposed assessment of additional personal income tax in the amount of \$14,330.11 for the year 1951.

Appellant, a resident of San Diego, California, was engaged in the business of bookmaking during 1951. Appellant conducted this business over the telephone in his home. Most of the bets handled by him were received from other bookmakers rather than from the individual wagerers themselves .

On his return for 1951, Appellant reported the amount of \$15,859.49 as net profit from a business or profession. On a supporting schedule attached to the return he reported gambling winnings of \$182,829.60, gambling losses of \$466,970.11 and a net profit of \$15,859.49. The only other item of income reported by Appellant was income from a trust amounting to \$18.68.

The Franchise Tax Board recomputed Appellant's taxable income by 'disallowing all gambling losses sustained subsequent to the effective date of Section 17359 of the Revenue and Taxation Code, viz., May 3, 1951 (Stats. 1951, p. 496). This increased Appellant's taxable income from gambling to \$257,905.63, resulting in the proposed assessment which is the subject of this appeal.

Appellant testified that he took horse racing bets, telephoned to him by his patrons, to the track at Tiajuana, Mexico, where he placed the bets. If a horse won, he stated that he received nothing, his patron receiving the winnings. If a horse

lost, Appellant stated that he received a 2½ percent commission paid by the Tiajuana racing interests, Appellant presented no corroborating evidence to support this testimony, which is refuted by his return, inasmuch as handling bets on a straight commission basis for a track would not have given rise to personal winnings or losses as reported thereon, Appellant also testified that he placed bets on his own behalf but he likewise failed to present any evidence in support of this testimony. Furthermore, as he has not furnished any information or evidence with respect to the amounts of his winnings and losses from personal bets, there is no basis upon which to make a segregation of any such amounts from the winnings and losses which resulted from his bookmaking activities,

In the Appeal of Margaret R. Van Cleave and Jules V. Van Cleave, decided this day, we sustained the action of the Franchise Tax Board in disallowing, pursuant to Section 17359 of the Revenue and Taxation Code, the deduction of bets lost from the gross winnings of a taxpayer engaged in illegal bookmaking,

The Appellant here has neither established any substantial different facts nor presented any arguments or authorities in addition to those considered in the Van Cleave appeal, For the reasons stated in our opinion therein, the action of the Franchise Tax Board in disallowing similar deductions by this Appellant must also be sustained,

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Herman E. Hetzel to a proposed assessment of additional personal income tax in the amount of \$14,330.11 for the year 1951 be and the same is hereby sustained,

Done at Sacramento, California, this 11th day of May, 1955, by the State Board of Equalization,

J. H. Quinn, Chairman

Geo. R. Reilly, Member

Paul R. Leake, Member

Robert E. McDavid, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce, Secretary